

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KDY, INC., a California ) Case No. 08-4074 SC  
Corporation, )  
Plaintiff, )  
v. ) ORDER GRANTING  
HYDROSLOTTER CORPORATION, a ) PLAINTIFF'S MOTION TO  
Canadian Corporation; PACIFIC ) REMAND  
PETROLEUM TECHNOLOGY, LLC, a )  
Delaware Limited Liability Company; )  
LEWIS TAYLOR, a Canadian Resident; )  
and DOES 1 through 25, Inclusive, )  
Defendants. )  
)

## I. INTRODUCTION

20 On June 12, 2008, the plaintiff KDY, Inc. ("Plaintiff" or  
21 "KDY") filed a Complaint in the Colusa County Superior Court of  
22 California. See Mot. to Remand Removed Action ("Motion"), Docket  
23 No. 5, Ex. 4 ("Compl."). The defendants Hydroslotter Corp.,  
24 Pacific Petroleum Technology, LLC ("PPT") and Lewis Taylor  
25 ("Taylor," collectively "Defendants"), filed a Notice of Removal  
26 based on diversity jurisdiction with this Court on August 26,  
27 2008. Docket No. 1. Plaintiff filed its Motion on September 25,  
28 2008. Defendants submitted an Opposition and Plaintiff filed a

1 Reply. See Docket Nos. 14, 16. For the following reasons, the  
2 Court GRANTS Plaintiff's Motion.

3

4 **II. BACKGROUND**

5 Plaintiff filed its Complaint in California state court  
6 alleging claims under California law, including, among others,  
7 fraud, deceit, breach of contract, breach of the implied covenant  
8 of good faith and fair dealing, and unjust enrichment. See Compl.  
9 The dispute arose out of Defendants' alleged failure to pay  
10 Plaintiff for services rendered in relation to the extraction and  
11 production of underground natural resources, including gas and  
12 oil. Id. ¶ 14.

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14 **III. LEGAL STANDARD**

15 "The burden of establishing federal jurisdiction is upon the  
16 party seeking removal . . . and the removal statute is strictly  
17 construed against removal jurisdiction." Emrich v. Touche Ross &  
18 Co., 846 F.2d 1190, 1194-95 (9th Cir. 1988) (internal citations  
19 omitted). "Federal jurisdiction must be rejected if there is any  
20 doubt as to the right of removal in the first instance." Gaus v.  
21 Miles, Inc., 980 F.2d 564, 566 (9th Cir. 1992). Moreover,  
22 "removal statutes should be construed narrowly in favor of remand  
23 to protect the jurisdiction of state courts." Harris v. Bankers  
24 Life & Cas. Co., 425 F.3d 689, 698 (9th Cir. 2005).

25 Ordinarily, "federal jurisdiction exists only when a federal  
26 question is presented on the face of the plaintiff's properly  
27 pleaded complaint." Caterpillar Inc. v. Williams, 482 U.S. 386,

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1 392 (1987). Thus, "the plaintiff [is] the master of the claim; he  
2 or she may avoid federal jurisdiction by exclusive reliance on  
3 state law." Id.

4

5 **IV. DISCUSSION**

6 Plaintiff presents three theories for remand. The Court need  
7 only reach the first. 28 U.S.C. § 1446 provides the rules for  
8 removal. Section 1446 requires the notice of removal to be filed  
9 within 30 days after the defendant is served a copy of the initial  
10 pleading or within 30 days "after the service of summons upon the  
11 defendant if such initial pleading has then been filed in court  
12 and is not required to be served on the defendant . . . ." 28  
13 U.S.C. § 1446 (b). In addition, § 1446 provides the following:

14 If the case stated by the initial  
15 pleading is not removable, a notice of  
16 removal may be filed within thirty days  
17 after receipt by the defendant, through  
18 service or otherwise, of a copy of an  
19 amended pleading, motion, order or other  
20 paper from which it may first be  
ascertained that the case is one which is  
or has become removable, except that a  
case may not be removed on the basis of  
jurisdiction conferred by section 1332 of  
this title [diversity jurisdiction] more  
than 1 year after commencement of the  
action.

21 Id.

22 In the present case, Defendants concede that they removed  
23 Plaintiff's action to this Court more than 30 days after being  
24 served. Opp'n at 5. Defendants argue, however, that Plaintiff's  
25 Complaint does not contain the allegations necessary to trigger  
26 diversity jurisdiction, and thus Defendants had one year to remove  
27 the action. In particular, Defendants argue that Plaintiff failed  
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1 to allege the citizenship of several of the Defendants, and thus  
2 Defendants had no way of knowing whether diversity jurisdiction  
3 existed.

4 The Ninth Circuit has stated:

5 [N]otice of removability under § 1446(b)  
6 is determined through examination of the  
7 four corners of the applicable pleadings,  
8 not through subjective knowledge or a  
9 duty to make further inquiry. Thus, the  
10 first thirty-day requirement is triggered  
by defendant's receipt of an initial  
pleading that reveals a basis for  
removal. If no ground for removal is  
evident in that pleading, the case is not  
removable at that stage.

11 Harris, 425 F.3d at 694.

12 Plaintiff's Complaint alleges that Defendant Hydroslotter  
13 "is, and at all times relevant hereto, was, a Canadian corporation  
14 . . . ." Compl. ¶ 1. The Complaint further alleges that  
15 Defendant PPT "is, and at all times relevant hereto was, a limited  
16 liability company organized under the laws of Delaware . . . ."  
17 Id. ¶ 2. Nonetheless, Plaintiff concedes "that the initial  
18 pleading did not provide the citizenship of Defendant Taylor or  
19 the principal place of business for both Defendants PPT and  
20 Hydroslotter."<sup>1</sup> Mot. at 5. The issue for the Court is whether  
21 Plaintiff's Complaint provided sufficient information such that  
22 diversity jurisdiction was apparent. If the answer is yes, then  
23 Defendants' Notice of Removal was untimely and remand is  
24 appropriate.

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26 <sup>1</sup> For diversity purposes, "a corporation shall be deemed to  
be a citizen of any State by which it has been incorporated and of  
the State where it has its principal place of business . . . ." 28  
27 U.S.C. § 1332.

1           In addition to the above-mentioned allegations, Plaintiff's  
2 Complaint also alleges that Defendant Taylor "is, and at all times  
3 relevant hereto was, an owner, director, managing agent, officer,  
4 and/or shareholder of Defendants Hydroslotter Corporation and PPT  
5 . . . ." Compl. ¶ 3. It further alleges that "there existed a  
6 unity of interest and ownership between Defendant Hydroslotter and  
7 Defendant Taylor, such that any individuality and separateness  
8 between them ceased to exist, and Defendant Hydroslotter is the  
9 alter ego of Defendant Taylor in that Defendant Taylor completely  
10 controlled, dominated, managed, and operated the corporation . . .  
11 ." Id. ¶ 7. The same allegations are made with respect to Taylor  
12 and PPT. Id. ¶ 9.

13           The essence of Defendants' argument is that because  
14 Plaintiff's Complaint did not specify the citizenship of each  
15 Defendant, Defendants had no way of knowing whether the action was  
16 removable. As noted above, defendants in general are not under "a  
17 duty to make further inquiry" beyond the four corners of the  
18 Complaint. Harris, 425 F.3d at 694.

19           Although Defendants argue that removal was not apparent on  
20 the face of the Complaint, they also concede that they did not  
21 receive any subsequent pleadings or documents from Plaintiff that  
22 would have indicated the citizenship of Defendants. See Opp'n at  
23 4. Thus, between Plaintiff's filing of the Complaint and  
24 Defendants' filing of the Notice of Removal, the only pleading  
25 from which Defendants might garner sufficient information to  
26 determine that there was indeed diversity jurisdiction was the  
27 original Complaint.

1           It is undisputed that § 1446 provides for a thirty-day time  
2 limit for filing a notice of removal when federal jurisdiction is  
3 apparent from the face of the complaint. See 28 U.S.C. § 1446(b);  
4 Harris, 425 F.3d at 694 (stating "the first thirty-day requirement  
5 is triggered by defendant's receipt of an initial pleading that  
6 reveals a basis for removal"). If the grounds for removal are not  
7 apparent on the face of the complaint, § 1446 provides a second  
8 time limit of an additional thirty days. This limit begins to run  
9 on the date on which the defendant receives "a copy of an amended  
10 pleading, motion, order or other paper from which it may first be  
11 ascertained that the case is one which is or has become removable  
12 . . . ." 28 U.S.C. § 1446(b); Harris, 425 F.3d at 697 (holding  
13 "[o]nce defendant is on notice of removability, the [second]  
14 thirty-day period begins to run"). As noted above, Defendants  
15 concede that they did not receive any additional pleading, motion,  
16 order or other paper from Plaintiff that informed them of their  
17 own citizenship.

18           Section 1446 also provides that if the basis for removal is  
19 diversity jurisdiction, this second thirty-day limit is limited to  
20 one year. See 28 U.S.C. § 1446(b) (stating "[i]f the case stated  
21 by the initial pleading is not removable, a notice of removal may  
22 be filed within thirty days after receipt by defendant . . . of an  
23 amended pleading, motion, order or other paper from which it may  
24 first be ascertained that the case is one which is or has become  
25 removable, except that a case may not be removed on the basis of  
26 jurisdiction conferred by section 1332 of this title more than 1  
27 year after commencement of the action"); Harris, 425 F.3d at 697

1 (holding "[a]dditionally, 28 U.S.C. § 1446(b) prevents, at least  
2 in the context of removal based on diversity, unreasonable waste  
3 of judicial resources by limiting the extended period of removal  
4 to one year after commencement of the action") (internal quotation  
5 marks omitted).

6 Defendants argue that this one-year limitation period is a  
7 third, separate time limit that applies to any removal based on  
8 diversity jurisdiction. See Opp'n at 5. As should be clear from  
9 the language of § 1446, however, the one-year period merely  
10 provides an outside limit in cases where removability is not  
11 apparent from the complaint, the defendant discovers from papers  
12 subsequently filed by the plaintiff that there is federal  
13 jurisdiction, and the federal jurisdiction is premised on  
14 diversity jurisdiction. Thus, in cases other than diversity  
15 jurisdiction, if a defendant learns from papers filed by plaintiff  
16 that the case is removable, the defendant may remove the case to  
17 federal court even if more than one year has elapsed since the  
18 case was initially filed. If, however, removability is based on  
19 diversity, the defendant may not remove the case to federal court  
20 after more than one year, even if the defendant subsequently  
21 learns that diversity jurisdiction exists.

22 What should be apparent is that § 1446's additional time  
23 limit is triggered when the complaint does not contain sufficient  
24 information for the defendant to determine whether the action is  
25 removable and when the defendant receives additional papers from  
26 the plaintiff that alert the defendant to federal jurisdiction.  
27 In the present case, Defendants concede that they never received  
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1 additional papers from Plaintiff. The only conclusion the Court  
2 can draw from this is that Plaintiff's initial Complaint contained  
3 sufficient information so that Defendants were on notice as to the  
4 existence of diversity jurisdiction. This conclusion is  
5 especially easy to reach given that the facts giving rise to  
6 diversity jurisdiction are Defendants' own places of citizenship.  
7 In effect, Defendants ask this Court to indulge in the idea that  
8 Defendants were ignorant of where they themselves lived and were  
9 located.

10 The Court's reasoning is not contrary to the holding of  
11 Harris. Although the court in Harris did hold that "notice of  
12 removability under § 1446(b) is determined through examination of  
13 the four corners of the applicable proceedings, not through  
14 subjective knowledge or a duty to make further inquiry," Harris,  
15 425 F.3d at 694, this conclusion was animated by the court's  
16 reluctance to impose a burden on "the defendant to investigate the  
17 necessary jurisdictional facts within the first thirty days of  
18 receiving an indeterminate complaint . . . ." Id. at 693. Thus,  
19 the court was clear that § 1446 "does not preclude defendants from  
20 removing a case where their discovery of the grounds of federal  
21 jurisdiction is belated because facts disclosing those grounds  
22 were inadequately or mistakenly stated in the complaint." Id. at  
23 695 (emphasis added).

24 In the present case, Defendants have not argued that they  
25 belatedly discovered their own geographical locations. Rather,  
26 they have instead attempted to use the language of § 1446(b) as a  
27 justification for their own neglect in timely removing their case;

1 although courts are not to look to the subjective knowledge of a  
2 defendant, Defendants here admit that they did not learn their own  
3 geographical location from any of Plaintiff's papers. This is not  
4 surprising, as courts surely can presume that a defendant is aware  
5 of various basic personal facts, including the location of one's  
6 citizenship, without delving into the prohibited area of a  
7 defendant's subjective knowledge.

8 Defendant PPT was personally served on July 14, 2008, in  
9 Dover, Delaware. Mot. Ex. 4. Defendant Taylor was served through  
10 substituted process on July 16, 2008, in Ontario, Canada. Id.  
11 Although Defendant Hydroslotter has yet to be served, it  
12 nonetheless joined in the Answer filed by PPT and Taylor. See  
13 Answer, Docket No. 3, ¶ 1 (stating "Hydroslotter, PPT and Taylor  
14 admit that Hydroslotter is a Canadian corporation . . .").  
15 Defendants did not file their Notice of Removal until August 26,  
16 2008. Because their Notice of Removal was filed after the thirty-  
17 day limit imposed by 28 U.S.C. § 1446(b), and mindful that  
18 "removal statutes should be construed narrowly in favor of remand  
19 to protect the jurisdiction of state courts," Harris, 425 F.3d at  
20 698, the Court hereby REMANDS Defendants' action to the Superior  
21 Court of Colusa County.

22 Finally, it is worth noting that, in any event, this Court is  
23 not the proper court for removal of Plaintiff's action. Plaintiff  
24 filed its Complaint in the Superior Court in the County of Colusa.  
25 Section 1446 requires a defendant seeking to remove an action to  
26 "file in the district court of the United States for the district  
27 and division within which such action is pending a notice of  
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1 removal . . . ." 28 U.S.C. § 1446(a); see also 28 U.S.C. §  
2 1441(a) (same). Not only is the County of Colusa not within the  
3 division of this Court, it is not even within the district of this  
4 Court, and instead lies within the Eastern District of California.  
5 See 28 U.S.C. § 84 (stating that the County of Colusa is located  
6 in the Eastern District of California).

7

8 **V. ATTORNEY'S FEES**

9 In addition to remanding the case, Plaintiff also seeks  
10 attorney's fees and costs in the amount of \$3,625.00 for the  
11 filing of the instant motion. Although 28 U.S.C. § 1447(c)  
12 authorizes the imposition of attorneys' fees when a case is  
13 remanded, the Court declines to do so.

14

15 **VI. CONCLUSION**

16 For the reasons discussed herein, the Court GRANTS  
17 Plaintiffs' Motion to Remand. The case is therefore REMANDED to  
18 the Colusa Superior Court for the State of California.  
19 Plaintiffs' Motion for Attorneys' Fees is DENIED.

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22 IT IS SO ORDERED.

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24 Dated: November 17, 2008



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UNITED STATES DISTRICT JUDGE

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